

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7135

Petition to impose penalties upon M & W                     )  
Trucking & Excavating, LLC re: probable Dig                )  
Safe violation involving an Adelphia Cable                    )  
Communications utility line located in Newport,            )  
Vermont, on 12/17/03    )

Order entered: 1/24/2006

**I. INTRODUCTION**

This docket concerns an alleged violation of Vermont's Underground Utility Damage Prevention System statute, 30 V.S.A. §§ 7001-7008 ("Dig Safe Statute"), as set forth in a Notice of Probable Violation ("NOPV") brought by the Vermont Department of Public Service ("Department") against M & W Trucking & Excavating, LLC ("M&W") pursuant to Public Service Board Rule 3.800. Specifically, on October 13, 2004, the Department filed an NOPV alleging that on December 17, 2003, M&W violated the provisions of 30 V.S.A. § 7004 with regard to certain underground facilities of Adelphia Cable Communications ("Adelphia").<sup>1</sup> The NOPV sought Public Service Board ("Board") imposition of specific penalties to which M&W objected. However, on December 30, 2005, the parties filed a Stipulation and Agreement ("Stipulation") in full settlement of this docket, for which Board approval now is sought.

For the reasons set forth below, I recommend that the Board approve the settlement stipulation filed by the parties.

**II. FINDINGS**

Pursuant to the provisions of 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings to the Board.

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1. Dig Safe Notice ("DSN") #131.

1. The NOPV alleged that M&W violated the provisions of 30 V.S.A. § 7004 because it failed "to properly notify Dig Safe Systems of their proposed excavation activities." NOPV at 2.
2. The NOPV sought the following remedial action: imposition of a fine in the amount of Two Hundred Dollars (\$200.00) and M&W's attendance at a Department-approved underground damage prevention seminar. NOPV at 3.
3. M&W acknowledged that it did not notify Dig Safe Systems prior to engaging in excavation. Letter of Sally Wright dated October 22, 2004.
4. The Stipulation states that M&W's management and excavation employees attended a Department-approved underground damage prevention seminar on February 11, 2005. Stipulation at 2.

### **III. DISCUSSION AND RECOMMENDATION**

M&W has not contested the allegations in the NOPV, and has agreed to the fine sought by the Department therein. In addition, M&W already has attended a Department-approved underground damage prevention seminar. Therefore, I recommend that the Board impose upon M&W a civil penalty in the amount of Two Hundred Dollars (\$200.00).

This Proposal for Decision has not been circulated to the parties pursuant to 3 V.S.A. § 811 because it does not adversely affect any party.

Dated at Montpelier, Vermont, this 19<sup>th</sup> day of January, 2006.

s/Judith M. Kasper  
Judith M. Kasper, Esq.  
Hearing Officer

**IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendation of the Hearing Officer are hereby adopted.
2. Within seven (7) days of the date of this Order, M & W Trucking & Excavating, LLC ("M&W") shall pay a civil penalty in the amount of Two Hundred Dollars (\$200.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont.

Dated at Montpelier, Vermont, this 24<sup>th</sup> day of January, 2006.

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|------------------------|---|--|
| <u>s/John D. Burke</u> | ) |  |
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| <u>s/David C. Coen</u> | ) |  |
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|                        | ) |  |
| <u>s/John D. Burke</u> | ) |  |

PUBLIC SERVICE  
BOARD  
OF VERMONT

OFFICE OF THE CLERK

FILED: January 24, 2006

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*